

DUNN LORING/MERRIFIELD METRO CENTER PROFFERS
PCA/CDPA/FDPA 2005-PR-039
PCA/CDPA/FDPA 88-P-030-02

January 15, 2008
Revised March 19, 2008
Revised April 3, 2008
Revised April 21, 2008
Revised April 28, 2008
Revised May 2, 2008
Revised May 5, 2008

Pursuant to Section 15.2-2303(A) of the Code of Virginia (1950, as amended) and Sect. 18-204 of the Zoning Ordinance of Fairfax County (1978, as amended), the property owner and applicant, for themselves and their successors and/or assigns (hereinafter collectively referred to as the "Applicant"), hereby proffer that the development of the parcels under consideration and shown on the Fairfax County Tax Maps as Tax Map 49-1-13-17A and 18A, Tax Map 49-1-01-27A, and Tax Map 49-2-01-13A and 15A (collectively, the "Property") shall be in accordance with the following conditions if, and only if, Proffered Condition Amendment/Conceptual Development Plan Amendment/Final Development Plan Amendment application PCA/CDPA/FDPA 2005-PR-039, and Proffered Condition Amendment/Conceptual Development Plan Amendment/Final Development Plan Amendment 88-P-030-02 (collectively, the "Application") are granted. In the event that this Application is not granted, these proffers will be immediately null and void and of no further force and effect, and the proffers accepted with RZ/FDP 2005-PR-039 and PCA/FDPA 88-P-030 for the Property will remain in effect.

The Applicant reaffirms its commitment to the proffers associated with RZ/FDP 2005-PR-039 and PCA/FDPA 88-P-030 (collectively, the "Original Proffers"), except for the following modifications:

GENERAL

1. Conceptual/Final Development Plan Amendment. The Property shall be developed in substantial conformance with the Conceptual Development Plan Amendment ("CDPA") and Final Development Plan Amendment ("FDPA") revised through April 17, 2008, prepared by Urban Engineering and Associates, Inc. (collectively, the CDPA and FDPA are the "Development Plan Amendment"), consisting of 34 sheets. The Development Plan Amendment supersedes the Development Plan dated November 2005 and revised through November 16, 2006 referenced in the Original Proffers, and all references in the Original Proffers to the Development Plan shall refer to the Development Plan Amendment.

PROPOSED DEVELOPMENT AND DEVELOPMENT PLAN

4. Proposed Development.

A. Overview of Proposed Development. The development proposed with this Application includes (a) above-grade parking structure(s) (the "WMATA

Garage”); (b) a surface parking lot with Kiss-and-Ride spaces (the “Kiss-and-Ride Lot”); (c) eight (8) bus bays and shelters (“Bus Shelters”) (collectively, the WMATA Garage, the Kiss-and-Ride Lot and the Bus Bays are the “Metro Improvements”); (d) three (3) residential buildings containing a minimum of 550 residential units and a maximum total of 720 residential units (plus 25,000 s.f. cellar) (collectively, the “Residential Buildings”); and (e) community-serving secondary/retail uses containing a minimum of 80,000 s.f and a maximum total of 125,000 s.f. and located on the ground floor of the Residential Buildings and the WMATA Garage and in stand-alone buildings (the “Secondary Uses”) (collectively, the Metro Improvements, Residential Buildings and Secondary Uses are the “Proposed Development”), all as shown on the Development Plan. The Proposed Development is summarized as follows:

Proposed Development

Principal Use - Public/Metro Parking and Bus Bays	Minimum 2,000 structured parking and Kiss-and Ride Lot spaces; 8 bus bays
Principal Use - Multifamily Residential Units:	Minimum 550 units up to 720 units maximum; 25,000 SF of cellar space not to contain habitable residential units
Secondary Uses/Retail (other than ADUs):	Minimum 80,000 s.f. up to maximum <u>125,000 SF</u>
TOTAL:	Up to 917,373 SF (excluding a maximum of 25,000 s.f. of cellar space)

6. Residential Units. A minimum of 550 residential units shall be constructed on the Property, with a maximum total number of residential units not to exceed 720 units. Such total shall include all required affordable dwelling units (“ADUs”) and all Workforce Units (as defined in Proffers 26 and 27). Multi-family residential units constructed as part of the Proposed Development shall have an average unit size of no greater than 1,000 s.f. of net saleable/leaseable floor area per dwelling unit; provided, however, that nothing shall preclude the Applicant from constructing individual units of lesser or greater size than the average set forth herein. No residential units in the Proposed Development shall have more than two (2) bedrooms (exclusive of living space commonly referred to as “dens”). The Applicant shall install ENERGY STAR® qualified kitchen appliances in all residential units in the Proposed Development. Prior to the issuance of the final RUP for the Proposed Development, as shown on the approved site plan, the Applicant will submit to the Department of Planning and Zoning, Environment and Development Review Branch, certification of compliance with this commitment.

STORMWATER MANAGEMENT FACILITIES

21. Stormwater Management Master Plan.

D. Maintenance Responsibility.

- ii. SWM Maintenance Fund; Residential Buildings. Prior to site plan approval for the first residential building to be constructed as part of the Proposed Development, the Applicant shall establish an account (the "SWM Maintenance Account") to be used for the ongoing maintenance of the SWM Facilities located on or serving the Property. The SWM Maintenance Account shall be an interest bearing account held by a financial institution authorized to do business in Virginia. As applicable, a line item for ongoing maintenance of the SWM Facilities shall be included in the budget(s) for any UOA/HOA/COA(s) established for the Proposed Development, and the fees collected for such purposes by the UOA/HOA/COA shall be deposited in the SWM Maintenance Account annually. The association documents that establish and control the UOA/HOA/COA shall provide that the SWM Maintenance Account shall not be eliminated as a line item in the UOA/HOA/COA budget, and that funds in the SWM Maintenance Account shall not be utilized for purposes other than to fund the maintenance of the SWM Facilities. Prior to issuance of first RUP for the first residential building, the Applicant shall make an initial contribution to the SWM Maintenance Account in an amount equal to the estimated cost for the residential units' maintenance responsibility for the first 20 years of the facilities, based on the cost data of the underground vault, as approved by DPWES. Thereafter, the SWM Maintenance Account shall be funded through pro-rata assessments of the subsequent owners of the Proposed Development as set forth in the UOA/HOA/COA documents, as applicable.
- iii. SWM Replacement Fund; Residential Buildings. Prior to site plan approval for the first residential building to be constructed as part of the Proposed Development, the Applicant shall establish an account (the "SWM Replacement Account") to be used as an escrow account for the eventual replacement of the SWM Facilities located on or serving the Property. The SWM Replacement Account shall be an interest bearing account held by a financial institution authorized to do business in Virginia. As applicable, a line item for future replacement of the SWM Facilities shall be included in the budget(s) for any UOA/HOA/COA(s) established for the Proposed Development, and the fees collected for such purposes by the UOA/HOA/COA shall be deposited in the SWM Replacement Account annually. The association documents that establish and control the UOA/HOA/COA shall provide that the SWM Replacement Account shall not be eliminated as a line item in the

UOA/HOA/COA budget, and that funds in the SWM Replacement Account shall not be utilized for purposes other than to fund the replacement of the SWM Facilities. Prior to issuance of first RUP for the first residential building, the Applicant shall make an initial contribution to the SWM Replacement Account in an amount equal to the estimated cost for the residential units' maintenance responsibility for the first 20 years of the facilities, based on the cost data of the underground vault, as approved by DPWES. Thereafter, the SWM Replacement Account shall be funded through pro-rata assessments of subsequent owners of the Proposed Development as set forth in the UOA/HOA/COA documents, as applicable.

COMMUNITY FACILITIES

28. County Athletic Field Contributions. In addition to the recreation facilities provided in the Residential Buildings, the Applicant also shall provide a contribution of \$300,000.00 to the Board of Supervisors (the "Parks Contribution") to be used for parks and/or athletic facilities and fields in the vicinity of the Property, as determined by the Providence District Supervisor in consultation with the Providence District Athletic Fields Task Force. The Applicant shall contribute the Parks Contribution within sixty (60) days following issuance of the final building permit for the Residential Buildings as shown on the approved site plan.

31. Park Authority Contributions.

- A. South Railroad Street Park. Prior to site plan approval for the first residential building to be constructed as part of the Proposed Development, the Applicant shall contribute \$15,000.00 to the Fairfax County Park Authority for capital improvements to the Fairfax County South Railroad Street Park.
- B. Dunn Loring Park. Within sixty (60) days following issuance of the final building permit for the Residential Buildings as shown on the approved site plan, the Applicant shall contribute \$20,000.00 to the Fairfax County Park Authority for capital improvements to the Fairfax County Dunn Loring Park.

[SIGNATURES ON FOLLOWING PAGES]

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Owner of Tax Map # 49-2 ((1)) parcels 13A and 15A,

Tax Map # 49-1 ((1)) 27A, and


Tax Map # 49-1 ((13)) parcels 17A and 18A

By: Joel R. Washington
Name: Joel R. Washington
Title: Contracting Officer

DUNN LORING METRO LLC,
a Delaware limited liability company
Contract Purchaser of: Tax Map # 49-2 ((1)) parcels 13A and 15A,
Tax Map # 49-1 ((1)) 27A, and
Tax Map # 49-1 ((13)) parcels 17A and 18A

By: TCR Mid Atlantic Land Acquisition Limited Partnership, its sole member

By: TCR Mid Atlantic Properties, Inc., its General Partner

By: 
Name: CHAD DUBÉAU
Title: VP

FINAL DEVELOPMENT PLAN CONDITIONS

FDPA 2005-PR-039

May 7, 2008

If it is the intent of the Planning Commission to approve FDPA 2005-PR-039 for a mixed-use development located at Tax Maps 49-1 ((1)) 27A, and 49-2 ((1)) 13A & 15A, staff recommends that the Planning Commission condition the approval by requiring conformance with the following development conditions, which supersede all previous conditions (those conditions carried forward from the previous approval are marked with an asterisk*):

1. Development of the property shall be in substantial conformance with the CDPA/FDPA entitled "Land Unit A, Dunn Loring – Merrifield Metro Station" consisting of thirty - seven sheets prepared by Urban Engineering & Assoc. dated and revised through April 17, 2008
2. Undirected uplighting for buildings/architectural features, signs, landscaping and the like shall be prohibited.*
3. Stormwater Management for the subject property shall be provided in conformance with the Waiver Conditions associated with the Public Facilities Manual Waiver #0378-WPFM-001-2 as contained in Attachment A.*
4. Prior to the issuance of a building permit for the WMATA Garage, final architectural plans that incorporate design features intended to address the mass and bulk of the WMATA Garage façade shall be provided to the Providence District Planning Commissioner and Supervisor's Office for review and comment.*
5. The applicant shall incorporate temporary onsite lighting into the construction Phasing Plan to promote pedestrian and bicyclist safety during construction.*

The above proposed conditions are staff recommendations and do not reflect the position of the Planning Commission unless and until adopted by the Planning Commission.

Waiver # 0378-WPFM-001-2 Conditions

Land Unit A, Dunn Loring - Merrifield Metro Station
RZ 2005-PR-039
August 24, 2006

1. The underground facilities shall be constructed in accordance with the development plan, these conditions and as determined by the Director of the Department of Public Works and Environmental Services (DPWES).
2. The underground facilities shall be located under the travel lanes or private streets and not within the open space areas of the proposed development, as determined by DPWES.
3. The underground facilities shall be constructed of reinforced concrete products only and incorporate safety features, including locking manholes and doors, as determined by DPWES at the time of construction plan submission.
4. The underground facilities shall be privately maintained and shall not be located in a County storm drain easement.
5. A private maintenance agreement, as reviewed and approved by the Fairfax County Attorney's Office, shall be executed and recorded in the Land Records of the County. The private maintenance agreement shall be executed prior to final plan approval.

The private maintenance agreement shall address:

- County inspection and all other issues as may be necessary to insure that the facilities are maintained by the property owners (e.g. Umbrella Owners Association) in good working condition acceptable to the County so as to control stormwater generated from the development of the site.
- A condition that the applicant, property owners, their successors or assigns shall not petition the County to take future maintenance or replace the underground facilities.
- Establishment of a reserve fund, for future replacement of the underground facilities.
- Establishment of procedures to follow to facilitate inspection by the County, i.e. advance notice procedure, whom to contact, who has the access keys, etc.
- A condition that the property owners provide and continuously maintain, liability insurance. The typical liability insurance amount is at least \$1,000,000, against claims associated with underground facilities.
- A statement that Fairfax County shall be held harmless from any liability associated with the facilities.

6. Operation, inspection and maintenance procedures associated with the underground facilities shall be incorporated in the site construction plan, private maintenance agreement, and umbrella owner association documents which insure safe operation, inspection and maintenance of the facilities.
7. A financial plan, for the umbrella owner association, to finance regular maintenance and full life cycle replacement costs, shall be established prior to final subdivision plat approval. A separate line item in the umbrella owner association annual budget for operation, inspection and maintenance shall be established. A reserve fund for future replacement of the underground facilities shall also be established to receive annual deposits from the members of the umbrella owners association based on the initial construction costs and an estimated 50-year lifespan for concrete products.
8. Prior to final construction plan approval, the applicant shall escrow sufficient funds for the benefit of the umbrella owner association which will cover a 20-year maintenance cycle of the underground facilities. These monies shall not be made available to the umbrella owner association until after final bond release.
9. All future purchasers of any of the residential units shall be advised prior to entering into a contract of sale, as well as within the recorded umbrella owner association documents, that the umbrella owner association is responsible for the operation, inspection, maintenance and replacement of the underground facilities.
10. The owner and its successors and assigns shall disclose, as part of the chain of title, to all future property owners, the presence of the underground stormwater facilities and the umbrella owner association's responsibility for operation, inspection, maintenance and replacement of such facilities, by including the following language within the deed for each lot and the record plat:

"The owner and its successors and assigns are responsible for the operation, inspection, maintenance and replacement of the underground stormwater facilities as set forth in the umbrella owners association documents and a private maintenance agreement entered into with the County."

